

In the Matter of Merchant Mariner's Document No. Z-874956-D1
Issued to: CLINTON R. SMITH

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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CLINTON R. SMITH

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 19 May, 1952, an Examiner of the United States Coast Guard at Norfolk, Virginia, revoked Merchant Mariner's Document No. Z-874956-D1 issued to Clinton R. Smith upon finding him guilty of misconduct based upon one specification alleging in substance that while serving as oiler on board the American SS SEA FIGHTER under authority of the document above described, on or about 12 May, 1952, while said vessel was in the port of Norfolk, Virginia, he wrongfully had in his possession a quantity of narcotics, to wit, marijuana.

At the hearing which commenced on 14 May, 1952, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statements and introduced in evidence the testimony of a U. S. Customs Agent and a Port Patrolman. At this point the hearing was adjourned to 10 A.M., on 19 May; but at that time, Appellant failed to appear. The Seizure Clerk, U. S. Customs then testified; and the hearing was again adjourned until 1:30 P.M., on 19 May, when Appellant again failed to appear; whereupon, the Examiner announced his findings and concluded that the charge and specification had been proved by proof of the specification and entered the order revoking Appellant's Merchant Mariner's Document No. Z-874-956-D1 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged:

1. The order is too severe due to the circumstances of the case;
2. Some of the Findings in the Opinion are not true;
3. Appellant was unable to testify due to some misunderstanding respecting the time when the hearing would reconvene on 19 May, 1952;
4. There is no evidence that Appellant is a habitual user of marijuana.

FINDINGS OF FACT

On 12 May, 1952, Appellant was serving as oiler on board the American SS SEA FIGHTER and acting under authority of his Merchant Mariner's Document No. Z-874956-D1. In the course of a routine search of the vessel, officers of the U. S. Customs found seeds (later proved to be marijuana) in Appellant's coats, a pair of trousers, in his locker, beneath his bunk, and one burnt seed was found on a shelf above his bunk.

OPINION

I am not favorably impressed by any of the points raised on this appeal. Nothing has been presented to show wherein the Examiner's "Findings" are untrue; and Appellant should have been sufficiently interested in the matter to inform himself of the hour when the hearing would reconvene. I have, however, excluded from my determination all testimony other than that which establishes the presence of the seeds in Appellant's clothing and effects.

The definition of marijuana in the Internal Revenue Code (26 U.S.C. 4761)

"means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof * * * * "

but does not include

"the sterilized seed of such plant which is incapable of germination."
(Underlineation supplied.)

In my opinion, proof of possession of marijuana seed was sufficient to support the charge unless Appellant could and did show that such seed was "sterilized and incapable of germination." See McKelvey v. United States, 260 U.S. 353, 357 and cases cited.

While it is probable the seeds discovered had no immediate pernicious properties, they were a potential source of supplying a usable substance in the future.

By this time it should be unnecessary to repeat that which I have so often announced - that merchant seamen who use or become involved with narcotics and drugs are undesirable in the American Merchant Marine.

ORDER

The Order of the Examiner dated at Norfolk, Virginia, on 19 May, 1952, is AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 17th day of July, 1952.